

LAWYERS HEAR ROOT EXPLAIN COURT PLAN

Experience of United States Is Basis of Procedure, He Tells Bar Association.

IS NOT OVER-OPTIMISTIC

League May or May Not See Fit to Adopt Obligatory Arbitration Feature.

Willu Root, speaking before the Association of the Bar last night, said he had no idea what the League of Nations, which is to meet in Geneva next month, will do with the plan for the Permanent Court of International Justice which he and his associates on the league's advisory committee of jurists devised at The Hague in June and July.

"There may be so much opposition to the obligatory arbitration feature that they will strike that out," he said. "I hope not. Whatever they do with it, another step forward has been taken. Our committee by unanimous agreement have formulated the plan. It is a step in the progress of civilization. All advances shock somebody, and an attempt to go too fast, too far at once, almost always ends in failure."

"Let over the dog went to Dover."

"I have found that to be the fact in observing the progress of law at Washington. Every good bill has to go through a period of gestation. All forward steps have to come in contact with the habits and preconceptions and prejudices of the people."

The plan adopted by the committee was taken very largely from the experience of the United States, Mr. Root said. He also gave his views as to principles which would tend to make this court a success where previous attempts at the decision of international questions had failed.

Why Treaties Failed.

He said that the Treaty of Commerce, executed by the United States with France and Great Britain, had failed because they had referred all justiciable questions to arbitration, but had mentioned those questions in terms so vague that it was difficult to distinguish them from others.

One of the difficulties of arbitration in the past, Mr. Root pointed out, is that the arbitral bodies were made up of diplomats and that the awards were apt to be based on expediency rather than upon justice. But the new world court was designed to be a court of judges "sitting and deciding according to the law and letting the consequences take care of themselves."

The formulation of a plan for such a court, he said, was the problem presented to the committee with members from ten countries which met at The Hague.

"We were called as experts purely," he continued—"just as engineers are called to propose a plan for a bridge. The task might seem simple, but it was difficult."

He dwelt on the fact that small countries have a voice in proportion to their importance; similarly big countries were unwilling to be overwhelmed by the numerical preponderance of the small countries. In making up the plan for the new court the committee therefore drew upon the experience of the Government of the United States.

Just such questions were presented to the Constitutional Convention of 1787, Mr. Root said. The big States were unwilling to be overborne by the numerical superiority of the small ones, and the small ones made their objections against the big ones. This was settled by the formation of the two legislative bodies, each State being represented by an equal number of Senators and by a number of Representatives. The American idea of a committee of conference to thresh out problems if the two appointing bodies failed to agree had been taken bodily to Europe, said Mr. Root. The findings of this committee are to be recommended to the Council and the Assembly of the league.

"In that way the old bugaboo of the Hague convention of 1907 has been removed," he added. "In the assembly the small nations can prevent the big ones from being unfair, and in the Council the big nations can prevent the small nations from being unfair."

"We came to the conclusion," he said

in another part of his address, "that we ought to have obligatory arbitration on a question of strict legal right. We put it into the plan in the exact wording of the resolution of this association (the Bar Association) and the language of amended Article XIII of the covenant. It is provided that the court should have jurisdiction over all internal questions submitted by both parties, and over all questions of international law, interpretation of treaties or of the advantages or effects relating to the obligation over which the dispute arose."

"The question arose whether countries in litigation should be represented in the court. That is a difficult question. At first any lawyer would say 'No.' Yet on full consideration we came to the contrary conclusion. We provided of course that members of the court should come from every country, and not more than one from any country. We provided that any country not included in the court should have a right to have a judge of its own people put into the court for the purposes of its own case. The reason for that is that the greatest obstacle to do justice as between nations is the failure of nations to understand each other. No people in the world appreciate that more than lawyers. We found in our meetings that it required long and patient effort to find out what we were talking about. It seemed necessary that there should be one man who understood the reactions and habit of thought of the litigant. We therefore provided for a court of eleven judges and four alternate or supplementary judges to be elected by the concurrent votes of the two bodies and to decide internal cases according to law."

"We also provided for the continuance of the old permanent court of The Hague to determine cases not altogether justiciable."

Mr. Root explained that the list of men suggested for judges of the new court were to be made up by the judges of the old Hague court, to the secretary-general of which two names were to be sent by the members from each country.

"So," said Mr. Root, "in this country Mr. Straus, Judge Gray, Mr. John Bassett Moore and myself will have to get together and propose two names. From the list submitted from the various countries the Council and Assembly will make their 'choice' on."

He described this procedure as being "as far away as possible from politics for what there is in it."

Mr. Root spoke informally and briefly. It was his first appearance in this country upon the subject of the plan for the new court.

MILLER SPEAKS AT HARDING MEETING

Thousands Turned Away From Hall in Buffalo Honoring G. O. P. Nominees.

Special Despatch to THE NEW YORK HERALD.

BUFFALO, Oct. 21.—The Democratic national and State governments were severely scored by Nathan L. Miller, Republican nominee for Governor, in an address here to-night. Judge Miller spoke from the same platform with Senator Harding. The vast Broadway Auditorium was crowded to the doors. Several thousands were turned away. Judge Miller received a hearty welcome.

"We are now engaged in a solemn referendum to take the heart out of the League of Nations," declared Judge Miller. "We are through with quibbles and subtleties. The American people are not going to make any distinction between moral and legal obligations. They are not going to make any distinction between guarantees, undertakings and expectations. They are not going to arouse any expectations on the part of the rest of the world which they do not undertake or intend to fulfill."

"Now, there is one issue in this campaign which is both State and national—the high cost of government. We are going to put a stop to that. In the State of New York it has amounted to the enormous sum, comparatively, of \$149,000,000 a year. State issues are mathematically one-tenth as important as national, because, although the expenses of the State have mounted in two years to the enormous sum that I have named, the State of New York is contributing to the National Treasury ten times that sum, or the huge sum of \$1,400,000,000."

"Now, in the State the Governor is pleading two excuses. One of them is that he has not been able to work with a Republican Legislature. That is a difficulty that is easily mended, because I will cooperate with a Republican Legislature."

"The other one is that he is absolutely helpless until he can get more power by amending the constitution. Well, we have a conspicuous example of one man power at Washington."

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ROOT WIRES TO COX PROVING HIS CHARGE

Continued from First Page.

telling them of it again. The trouble about giving the guarantee provided in Article X, is that the making of a treaty containing it is a solemn assurance to all the nations that it is within the treaty making power, and that the promise to make war binds Congress as fully as it binds all other members of our Government to maintain the pledged faith of the United States.

"In all governments the power to declare war rests somewhere, and an agreement to make war is an agreement that that power shall be so exercised by the officers in whom it rests. A refusal by Congress to pass the necessary resolution would simply be a breach of the treaty."

U. S. Must Keep Faith.

"An analogous case is the power of Congress to appropriate money. There is no other power in our Government to do that; but, if the United States makes a treaty agreeing to pay a million dollars to another country, would any one say that the obligation could be cancelled by a refusal of Congress to appropriate the money? Certainly not; the only effect would be that the United States would have broken faith. The real question is whether we shall enter into a guarantee under which the faith of treaties will require Congress to pass a resolution declaring war. That is what the President proposed. That is what your telegram makes it clear you propose."

"On the same day when you sent the telegram, according to the press reports, a meeting at Providence some five in the audience asked you, 'Would you accept the League reservations to the League of Nations?' There was your opportunity. Among those reservations was one which said:

"The United States assumes no obligation to preserve the territorial integrity or political independence of any other country by the employment of its military or naval forces, except, unless in any particular case the Congress, which under the Constitution has the sole power to declare war or to authorize the employment of the military or naval

forces of the United States, shall in the exercise of full liberty of action by act or joint resolution so provide."

"The reservation would leave Congress free whenever the time came to act in accordance with its judgment and conscience, and the judgment and conscience of its constituents regarding the merits of the controversy at that time."

Would Bind Congress.

"Your position as you now state it would leave Congress bound by the solemn pledge of faith of our country to pass the resolution for war, no matter what the merits of the controversy might be."

"If you did not mean that Congress should be bound, you had an opportunity at that meeting in Providence to say, 'I agree to this reservation or to this part of this reservation.' Your answer is reported to have been, 'The League reservations never were seriously suggested. If they had been, Senator Lodge would have declared for them in the Republican platform adopted at Chicago.' And, thus you sidestepped the question, and you state in your telegram to me the perfectly futile thing you are willing to do upon the subject of Article X."

"Your telegram to me undertakes to state your case, and both what you say and what you refrain from saying confirm the understanding I expressed in my speech that your position and purpose are to impose upon the United States the covenant negotiated at Paris without any real change whatever."

PUTS LEAGUE ABOVE PARTY.

McAdoo in Utah Makes Plea for Its Adoption.

Ogden, Oct. 21.—William G. McAdoo made two addresses here to-day, the first to a theatre audience at 9:30 o'clock and the second to railroad workers in the railroad yards. Following his railroad address he was to be taken to Salt Lake in an automobile with Gov. Hamberger, who presided at the theatre meeting.

Mr. McAdoo's voice appeared to be in bad shape. Members of his party said he had been taking strenuous treatments to keep his throat in speaking condition. The former Cabinet member uttered a strong plea for the adoption of the League of Nations, and was loudly cheered when he reiterated that if the Republicans were for the covenant and the Democrats against it he would vote for Senator Harding.

SET COX RIGHT, SAYS SCHURMAN TO ELIOT

Cornell's Former Head Resents Criticisms of the 31 by Harvard's Ex-President.

Jacob Gould Schurman, former president of Cornell University, one of the thirty-one friends of "international co-operation to preserve peace," who issued a statement recently in favor of Senator Harding, took up the cudgel last night against Charles W. Eliot, former president of Harvard.

Speaking to Harvard students Wednesday night Dr. Eliot criticized the thirty-one. He declared the reasonings of the President's critics in the Senate were "so selfish, mean and cowardly that they together constitute a slander on the national character."

"On the contrary," said Dr. Schurman, speaking at Lawrenceville, N. J., "I am of the opinion that those discussions proved highly educative for the nation."

The speaker added: "We, the signers of the statement criticised by Dr. Eliot, are, I imagine, although I speak only for myself, in general sympathy with those reservations which the President refused to accept. We certainly would not have the United States join the league so long as our joining it involves an acceptance of Article X, and other objectionable features."

"We are in favor of a league, or society, or association of nations based not on force, but on law and justice, with a world court for the adjudication of justiciable issues, with suitable agencies for arbitration and conciliation and with a world conference for the consideration and if possible the settlement of political controversies."

"Dr. Eliot complained that the signers of our statement have not correctly reported the position of the Democrats in the matter of modifications of the covenant. Is Gov. Cox, then, ready to amend the covenant?"

"We know that Gov. Cox is in complete accord with President Wilson, for he has himself so declared. But we have not been able to find in the Democratic platform or in the statements of President Wilson or Gov. Cox any demand on the American people short of acceptance of all the obligations contained in the covenant as the President brought it back from Paris—the covenant, the whole covenant and nothing but the covenant."

"Of course, there have been statements and talk of clarifying the obligations of the covenant. But, as Senator Harding has said—no doubt with special though not exclusive reference to Article X—these obligations are already so clear that what we want is not to make them clearer but to get rid of them altogether."

"In the Democratic party, is President Wilson, is Governor Cox ready to strike out Article X? That would be at once a first step both in the clarification and in the denaturation of the league."

Dr. Schurman reviewed the various utterances of Senator Harding on the question, which he summed up as: "Negatively, he declared that he is opposed to the Wilson type of league and while President Wilson tells us that Article X is the heart of the league, Senator Harding described Article X as the martial heart of a military alliance."

"Positively, Senator Harding assures us he is in favor of a society or league or association of nations to maintain peace and prevent war."

Harding 2 to 5 Odds On; Cox Put 2 to 1 Against

Special Despatch to THE NEW YORK HERALD.

CHICAGO, Oct. 21.—Jim O'Leary, the Chicago gambler who has handled wagers on the Presidential campaigns for the last thirty years, quotes the following odds in his book: 2 to 5 on Harding and 2 to 1 against Cox.

BORAH SEES DANGER IN LEAGUE COVENANT

'Only One Safe Course,' He Says in Cincinnati.

CINCINNATI, Oct. 21.—Senator W. E. Borah of Idaho in a speech at Cincinnati Music Hall to-night characterized the League of Nations covenant as "a dangerous league."

"This document," Senator Borah declared, "has been handled with care by the League of Nations. These amendments and reservations are changes and which was to keep us out of war, is found to be so dangerous that Gov. Cox denounces the imputation that he is for it."

"Mr. Root quoted Mr. Cox as being for the Wilson league just as Mr. Wilson demanded it," he continued. "Gov. Cox, in deep and consuming wrath, demands retraction of this charge. He says he is not for it—he is for something else. He does not define the kind of league he is for, but one thing is certain, he will not submit to the charge that he is for the Wilson league. These amendments and reservationists and fixers will continue their disagreements and their quarrels until they will make the irreconcilables respectable."

Mr. Borah said in closing: "There is just one safe course for the people of this country and that is to have done with these bickerings about clarifications, reservations and amendments and following the teachings of the wisest of men and stay out of Europe."

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